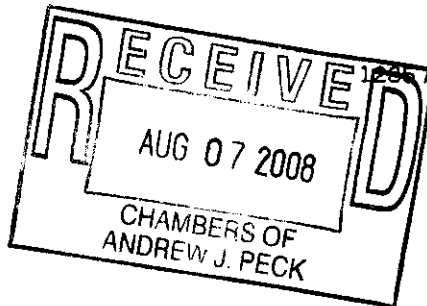


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JOHN J. PHELAN, III, P  
DOC#  
DATE FILED: 8/7/08



ATTORNEY AT LAW

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NEW YORK, NY 10019

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Fax (212) 315-3028

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August 7, 2008

Via Fax (212) 805-7933

Hon. Andrew J. Peck  
U.S. Magistrate Judge  
United States District Court  
Southern District of New York  
U.S. Courthouse, Room 1370  
500 Pearl Street  
New York, NY 10007

MEMO ENDORSED */ 2*

Re: Procapui-Produtiores v. Marcial Gerald Layani, et al.; 07CV6627

Dear Magistrate Judge Peck:

I represent the Higgins Defendants in the above matter. I received your Honor's memorandum Order or yesterday when I arrived in Florida last evening. I received Mr. DeMaio's letter of yesterday at the same time.

Your Honor's letter directs a conference for tomorrow morning at 9:30 am. As I have just arrived in Florida, that would necessitate my immediate return to New York which I will attempt to arrange if Your Honor so directs. I would, however, respectfully request that either (i) I be permitted to attend by telephone or (ii) the conference be deferred until another date.

I have spoken to Mr. DeMaio and he has advised me that he also will be out of town tomorrow and that he consents to a telephone conference if that meets with the Court's approval.

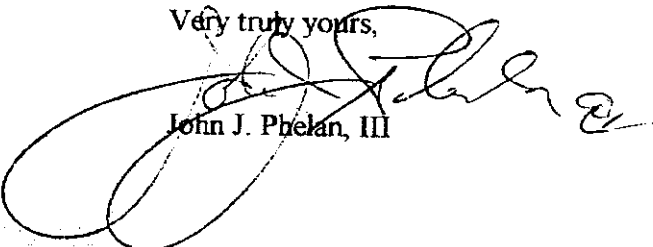
If the Court wishes to consider alternate dates, although I am not planning to come to New York until the week of August 25, I can make myself available August 13-15 and August 21 or 22 or anytime the week thereafter. I have Court hearings in Florida on August 12 and August 20, 2008 which have been long set and involve other parties.

I expect to send shortly a brief written opposition to the application in Mr. DeMaio's letter seeking to compel the production of additional documents.

If I am to travel to New York for a conference tomorrow, I will need to know immediately to arrange reservations.

Thank you very much.

Very truly yours,

  
John J. Phelan, III

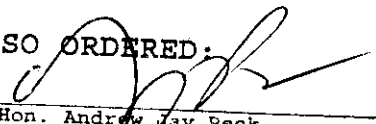
cc. via email

Luigi DeMaio, Esq.,  
Attorney for Plaintiff

**MEMO ENDORSED** 8/7/08

Both cannot be your telephone -  
you should coordinate with the  
other - I jointly call in at 9:30 PM  
to 212-805-0036.

SO ORDERED:

  
Hon. Andrew Jay Peck  
United States Magistrate Judge

**BY FAX**

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated:** August 7, 2008

**Total Number of Pages:** 3

TO	FAX NUMBER
John J. Phelan, III, Esq.	561-731-4097
Luigi P. De Maio, Esq.	212-889-1391

## **TRANSCRIPTION:**

**MEMO ENDORSED 8/7/08**

**Both counsel can appear telephonically – you should coordinate with each other and jointly call in at 9:30 AM to 212-805-0036.**

**Copy to: Judge Barbara S. Jones**